

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-TP-650
)	
Daniel Clephar)	NAL/Acct. No.200332700020
4816 Tam Drive)	
Orlando, Florida)	FRN 0008369522
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 14, 2003

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Daniel Clephar (“Mr. Clephar”) apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ Specifically, we find Mr. Clephar apparently liable for operating a radio station on the frequency of 92.7 MHz in Orlando, Florida without Commission authorization.

II. BACKGROUND

2. On December 6, 2002, two agents from the Commission’s Tampa Field Office, using a mobile direction finding vehicle in the Orlando, Florida area, detected an FM radio station operating on 92.7 MHz. The voice on the broadcast identified the station as “Radio Maximo.” A search of Commission records showed that there was no FM radio station licensed on 92.7 MHz in the Orlando, Florida area. The agents traced the station’s signal to the residence at 4816 Tam Drive, Orlando, Florida. An antenna was mounted on a pole attached to a tree in the back yard of the residence. The agents determined through field strength measurements that the station’s field strength was 5,599 times greater than the permissible level for a non-licensed low-power radio transmitter² and that, therefore, the station required a license to operate. Immediately thereafter, while the station continued to operate, the agents inspected the radio station. A man identified as Daniel Clephar answered the door of the residence. Mr. Clephar led the agents through the residence to the garage. Coaxial cable connected to the antenna in the back yard entered the garage and was connected to an FM broadcast transmitter located inside the garage. The transmitter was tuned to 92.7 MHz. The agents recognized Mr. Clephar’s voice as the same one they heard identify the station on the air as “Radio Maximo.” A search of Florida Division of Corporations records showed a corporation by the name “D & C Construction and Stucco of Orlando, Inc.” with Daniel Clephar as the officer/director and 4816 Tam Drive, Orlando, Florida, as the corporation’s principal

¹ 47 U.S.C. § 301.

² See 47 C.F.R. § 15.239.

address.

III. DISCUSSION

3. Section 301 of the Act provides that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On December 6, 2002, Daniel Clephar operated radio transmitting equipment on the frequency 92.7 MHz without the required Commission authorization.

4. Based on the evidence before us, we find Mr. Clephar willfully³ violated Section 301 of the Act by operating radio transmission apparatus without a license.

5. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for operation without an instrument of authorization for the service is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Daniel Clephar is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Act by operating radio transmitting equipment on the frequency 92.7 MHz without benefit of the required Commission authorization.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Daniel Clephar SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Daniel Clephar, 4816 Tam Drive, Orlando, FL, 32808.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
Tampa Field Office, Enforcement Bureau

Attachment

⁸ See 47 C.F.R. § 1.1914.